IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4212 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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NAVGHANBHAI CHADABHAI VAGHRI

Versus

POLICE COMMISSIONER OR HIS SUCCESSOR IN THE OFFICE

Appearance:

1. Special Civil Application No. 4212 of 2002

MS KD PARMAR for Petitioner No. 1

RULE SERVED for Respondent No. 1,3

MR HH PATEL, AGP for Respondent No. 2

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 02/07/2002

ORAL JUDGEMENT

1. By this petition under Article 226 of the Constitution of India, the petitioner- detenu has

challenged the legality and validity of the order of detention dated 4.11.2001 passed against him by the District Magistrate, Kheda District at Nadiad, in exercise of the powers conferred on him by Section 3(2) of The Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as the PASA Act) the petitioner-detenu. The petitioner has been detained by the order of detention on the ground that he is "dangerous person" within the meaning of Section 2(c) of the PASA Act.

2. To brand the present petitioner as a "dangerous person", the detaining authority has considered number of criminal cases registered against the petitioner in various police stations of districts Kheda and Sabarkantha as reflected in the grounds of detention. The petitioner has been involved in in all 11 criminal cases. Barring one, all the offences are punishable under Sections 457, 380, 114 of IPC etc. Last offence registered against the petitioner was on 9.9.2001 is the offence punishable under Section 25(1)A of the Arms Act and Section 135 of Bombay Police Act.

3. Ld. counsel Ms. Banna Datta appearing for Ld. counsel Ms. K.D.Parmar for the petitioner, has taken me through the memo of the petition and the order of detention is challenged on number of grounds. The say of the ld. AGP Mr. Patel is also considered. Ld. counsel appearing for the petitioner has mainly concentrated her arguments on the point that the detenu was not supplied with important and vital documents and the detaining authority itself had not verified the statements of the witnesses which were considered while claiming privilege under Section 9(2) of the PASA Act. Placing reliance on the decision in the case of Bai Amina w/o Ibrahim Abdul Rahim Alla v/s State of Gujarat and Others, 1981 (22) GLR 1186. It is submitted that the detaining authority must be fully satisfied that the apprehension expressed by the informant is honest, genuine and reasonable in the circumstances of the case. Even if ratio of the decision in the case of Champakbhai Madhubhai Vasava v/s District Magistrate, 1997(2) GLH 60 is accepted, even than the detaining authority was supposed to ascertain the genuineness of the apprehension expressed by the respective witnesses and only then privilege under Section 9(2) of the PASA Act can be claimed. Though the ld. AGP has tried to point out that in the present case, statements recorded by the Police Inspector were verified by the responsible officer i.e. Deputy Supdt. of Police

and those statements were placed before the Additional District Magistrate and that Additional District Magistrate is the delegated authority who has put his counter signatures below these statements. Detaining authority has considered all these statements and has recorded its subjective satisfaction. Be that as may be, even than the following infirmities would remain which go to the root of the validity and legality of the order of detention;

(i) copy of the order delegating the powers to the Addl. District Magistrate has not been supplied to the detenu with papers and the execution of the order of detention;

(ii) subjective satisfaction is recorded by the Additional District Magistrate. So, he is supposed to ascertain the correctness of the apprehension expressed by the witnesses. It is mentioned in the order or grounds of detention that he himself has verified this aspect from Deputy Supdt.of Police and/or from District Magistrate.

4. Even for the sake of argument it is accepted that certain inquiries were made by the District Magistrate, then copy of said procedure could have been supplied to the detenu. The observations of the Apex Court in the case of Bai Amina (supra) that " The right of the detenu to be furnished with material facts and the particular is, however, subject to the limitations mentioned in Article 22 Clause (6). The detaining authority is thereunder empowered to withhold such facts and particulars, the disclosure of which such authority considers to be against the "public interest", squarely apply to the facts of the present case and these infirmities go to the route of the validity and legality of the order. Such an order cannot be sustained and, therefore, the same requires to be turned down on the sale ground without going into the merits of other grounds raised in this petition.

5. For the reasons aforesaid, this petition is allowed. Impugned order of detention dated 4.11.2001 passed by the District Magistrate, District Kheda at Nadiad, is hereby quashed and set aside and detenu is hereby ordered to be set at liberty forthwith if he is not required to be detained in any other case. Rule is made absolute.

Direct Service is permitted.

2-7-2002 [C. K.BUCH, J]
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